

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: TESTOSTERONE REPLACEMENT  
THERAPY PRODUCTS LIABILITY  
LITIGATION**

**THIS DOCUMENT RELATES TO:**

All Cases Listed in Exhibit A

**Case No. 1:14-cv-1748  
MDL No. 2545**

**Hon. Matthew F. Kennelly**

**CASE MANAGEMENT ORDER NO. 70 -  
ORDER OF DISMISSAL AS TO CASES NAMING  
PFIZER INC., PHARMACIA & UPJOHN COMPANY LLC,  
AND ADDITIONAL CO-DEFENDANTS  
PURSUANT TO CASE MANAGEMENT ORDER NO. 19B (AMENDED)**

Amended Case Management Order No. 19B (“CMO 19B”) (ECF No. 1663) set forth procedures relating to Plaintiffs’ off-label fraud-based marketing claims against Pfizer Inc. and/or Pharmacia & Upjohn Company LLC (collectively “Pfizer” or “the Pfizer Defendants”). Those claims include Plaintiffs’ claims for fraud, consumer protection, and unjust enrichment, to the extent those claims are based on Pfizer’s off-label promotion of Depo-Testosterone (Claims Seven, Nine, and Ten in Plaintiffs’ Master Complaint), plus certain claims that derive in part from those claims (Claims Eleven through Fourteen).

CMO 19B required any Plaintiff who wished to pursue his off-label fraud-based marketing claims against Pfizer to serve substantive responses to the interrogatory and request for admission attached as Exhibit 1 to CMO 19B within 30 days of filing a short-form complaint. None of the Plaintiffs listed in the attached Exhibit A served responses to the interrogatory and request for admission.

Accordingly, IT IS HEREBY ORDERED that the off-label fraud-based marketing claims against Pfizer asserted by the Plaintiffs listed in the attached Exhibit A are dismissed with

prejudice. Combined with the Court's earlier rulings on preemption, this dismissal operates to terminate all such Plaintiffs' claims in their entirety. As provided in CMO 19B, this dismissal shall apply only to claims against the Pfizer Defendants; any claims against other Defendants shall not be impacted.


Further, the Court hereby finds that partial final judgment in favor of the Pfizer Defendants is appropriate because: (1) the claims against the Pfizer Defendants are separate from those against other defendants for purposes of Federal Rule of Civil Procedure 54(b); and (2) there is no just reason for delay. First, the dismissed claims against the Pfizer Defendants are separate from the retained claims against other defendants because the "facts underlying [the] different claims are different," *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698, 702 (7th Cir. 1984), and the claims "rely on entirely different legal entitlements yielding separate recoveries." *Marseilles Hydro Power, LLC v. Marseilles Land and Water Co.*, 518 F.3d 459, 464 (7th Cir. 2008). Second, there is no just reason for delay, and it will promote judicial economy to have any appeal of the Court's rulings determined expeditiously, rather than waiting until the claims against the remaining defendants are resolved. No appellate court will have to decide the same issues (namely, this Court's preemption ruling) more than once even if there are subsequent appeals. Accordingly, the Clerk of the Court is directed to enter partial final judgment in favor of the Pfizer Defendants in the docket for each such case.

As provided in CMO 19B, this Order shall not be construed to waive any party's preemption-related positions, including Plaintiffs' potential appeal of the Court's prior preemption rulings.

Each side shall bear its own costs.

**IT IS SO ORDERED.**

September 28, 2017

  
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**MATTHEW F. KENNELLY**  
**UNITED STATES DISTRICT JUDGE**

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

***In re Testosterone Products Liability Litigation***  
**Case No. 1:14-cv-01748**

**List of Cases to be Dismissed with Prejudice  
Pursuant to CMO 19(B) Amended**

**Multiple Defendants**

	<b>Plaintiff's Name</b>	<b>Docket Number</b>	<b>Defendants</b>	<b>Plaintiff Counsel</b>
1	Keeney, Edward	1:16-cv-00430	AbbVie Inv.; Abbott Laboratories; Unimed Pharmaceuticals, LLC; Solvay, S.A; Pfizer, Inc; Pharmacia & Upjohn Company Inc.	Meyers & Flowers, LLC
2	Smith, Daryl Glenn	1:17-cv-05734	Eli Lilly and Company; Lilly USA, LLC; Acrux Commercial Pty Ltd.; Acrux DDS Pty Ltd.; AbbVie Inc.; Abbott Laboratories; AbbVie Products LLC; Unimed Pharmaceuticals, LLC; Besins Healthcare, Inc.; Besins Healthcare, S.A.; Pfizer, Inc. and Pharmacia & Upjohn Company Inc.	Beasley, Allen, Crow, Methvin, Portis, & Miles, P.C.